

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CATHY CALDWELL, an individual)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 2:06 CV 1088-MHT
)	
SMART ALABAMA, LLC, a legal)	
entity,)	
)	
Defendant.)	

MOTION FOR LEAVE TO AMEND COMPLAINT

COMES NOW the Plaintiff, Cathy Caldwell, and hereby requests leave of this Honorable Court to amend her Complaint. As grounds for this motion, the Plaintiff states and shows as follows:

1. At the time the Plaintiff's original Complaint was filed, the undersigned was not aware that the Plaintiff was, in fact, not an employee of the Defendant, Smart Alabama, LLC. Following the deposition of the Plaintiff, it is now understood that the Plaintiff was, at all times pertinent to this action, an employee of a company which provided security services to the Defendant.
2. Due to this discovery, the Plaintiff requests leave of this Honorable Court to amend her Complaint, alleging state law claims of invasion of privacy, outrage, and assault and battery against the Defendant as more fully set forth in the attached proposed Amended Complaint. The Court may properly exercise jurisdiction of such claims in accordance with supplementary or pendent jurisdiction.

3. The undersigned is not seeking leave to amend the original complaint in a spirit of bad faith or an underlying dilatory motive. Furthermore, if this Court allows such amendments, the defendant will not be subject to any undue prejudice. In such circumstances, as this Court is well aware, “the leave sought, should, as the rules require, be ‘freely given.’” *Thomas v. Farmville Mfg. Co., Inc.*, 705 F.2d 1307 (11th Cir. 1983)(quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962)).

Based on the foregoing, the Plaintiff respectfully requests that this Honorable Court grant leave to the Plaintiff to amend the original complaint.

/s/ Richard F. Horsley
Richard F. Horsley (HOR023)
Lindsey O. Hill (HIL055)
Attorneys for Plaintiff

OF COUNSEL:

KING, HORSLEY & LYONS, LLC
1 Metroplex Drive, Ste. 280
Birmingham, Alabama 35209
(205) 871-1310

CERTIFICATE OF SERVICE

_____I do hereby certify that I have served a copy of the foregoing on all counsel of record by placing a copy of same in the U.S. Mail, prepaid first class postage, on this the 27th day of June, 2007.

Marcel L. Debruge, Esq.
Ronald W. Flowers, Jr., Esq.
Kathryn M. Willis, Esq.
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**IN THE UNITED STATES DISTRICT COURT
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CATHY CALDWELL, an individual

Plaintiff,

V.

Civil Action No.: 2:06 CV 1088-MHT

**SMART ALABAMA, LLC, a legal
entity,**

Defendant.

AMENDED COMPLAINT

COMES NOW the Plaintiff and submits herewith her Amended Complaint as follows:

1. The Plaintiff adopts and incorporates herein all previous paragraphs contained in Plaintiff's Original Complaint and further avers:

PARTIES

2. Plaintiff hereby adds Rance Maddox, an agent or employee of Defendant Smart Alabama, LLC, as a party defendant pursuant only to the amended state law claims, more fully set forth below.

FACTS

3. The Plaintiff adopts and incorporates herein all previous paragraphs contained in Plaintiff's Original Complaint and further states:
4. Rance Maddox is the individual that Plaintiff alleges committed the acts of sexual harassment against her as stated in her EEOC charge and Original Complaint.
5. Defendant Smart Alabama, LLC is vicariously liable to the Plaintiff, according to the doctrine of respondeat superior.

6. Due to the acts previously cited in the Plaintiff's Original Complaint, the Plaintiff suffered emotional distress, mental anguish and lost wages.

JURISDICTION

7. The Plaintiff avers the following and alleges that this Court may properly assert supplementary or pendent jurisdiction over the following state law claims.

COUNT III – OUTRAGE

8. The Plaintiff adopts and incorporates herein all previous paragraphs contained in Plaintiff's Original Complaint and paragraphs 1 through 7 above and further states:
9. This is a claim against Defendants arising under the laws of the State of Alabama prohibiting the intentional infliction of emotional distress.
10. The conduct of the defendant, Smart Alabama, LLC, and the individual defendant, Rance Maddox, as previously set forth in the Original Complaint, was extreme, outrageous and intended to inflict emotional distress upon the Plaintiff.
11. As a proximate result, the plaintiff suffered damages including mental anguish, emotional distress, and lost wages.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court will grant compensatory damages to include mental anguish, emotional distress, lost wages, and punitive damages.

COUNT IV - INVASION OF PRIVACY

12. The Plaintiff adopts and incorporates herein all previous paragraphs contained in Plaintiff's Original Complaint, and paragraphs 1 through 11 above and further states:

13. The conduct of the defendants, as previously set forth in the Original Complaint and herein above, constitute intentional wrongful intrusion into the plaintiff's physical solitude or seclusion in such a manner as to cause mental suffering, shame or humiliation to a person of ordinary sensibilities.
14. As a proximate result, the plaintiff suffered damages including mental anguish, emotional distress, and lost wages.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court will grant compensatory damages to include mental anguish, emotional distress, lost wages, and punitive damages.

COUNT V - ASSAULT AND BATTERY

15. The Plaintiff adopts and incorporates herein all previous paragraphs contained in Plaintiff's Original Complaint, and paragraphs 1 through 14 above and further states:
16. The conduct of the defendants, as previously set forth in the Original Complaint and herein above, constitute assault and battery, in that the individual defendant, Rance Maddox, and vicariously, Smart Alabama, LLC, committed intentional acts of touching the Plaintiff that were harmful or offensive.
17. As a proximate result, the plaintiff suffered damages including mental anguish, emotional distress, and lost wages.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court will grant compensatory damages to include mental anguish, emotional distress, lost wages, and punitive damages.

/s/ Richard F. Horsley
Richard F. Horsley (HOR023)
Lindsey O. Hill (HIL055)
Attorneys for Plaintiff

OF COUNSEL:

KING, HORSLEY & LYONS, LLC
1 Metroplex Drive, Ste. 280
Birmingham, Alabama 35209
(205) 871-1310

SERVE DEFENDANT AS FOLLOWS:

Rance Maddox * **BY CERTIFIED MAIL**
202 Surrey Avenue
Troy, Alabama 36081

Smart Alabama, LLC * **BY CERTIFIED MAIL**
c/o George B. Harris
401 Adams Ave., Ste. 780
Montgomery, Alabama 36104

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